

356. The UN Rapporteur, Martin Scheinin, has re-emphasised that many of interrogation techniques in which "the CIA has indeed been involved, and continues to be involved", in his assessment "involve conduct that amounts to a breach of the non-derogable right to be free from torture and any form of cruel, inhuman or degrading treatment."<sup>309</sup>

357. The American study, by the Intelligence Science Board, focuses on practical considerations, essentially considering whether or not interrogation techniques like those used by the CIA are effective in gathering accurate intelligence. In its entirety, the report concludes that many post-9/11 techniques are "outmoded, amateurish and unreliable,"<sup>310</sup> in its detail, the report offers plausible explanations as to how interrogations have so frequently spiralled into abuse:

*"Too often, interrogators intensely and aggressively pursue their operational agenda without sufficiently acknowledging that the source, too, has an agenda ... Disregarding the source's interests can lead to unexpected and seemingly inexplicable areas of disagreement and even outright defiance ... As this war [on global terrorism] has continued, evidence of the employment of coercive methods by US interrogators has appeared with alarming frequency."*<sup>311</sup>

358. In my opinion, the very option to make use of coercive techniques based on physical and psychological pain or duress is a poisoned chalice in the hands of a CIA interrogator. Such is the national security imperative to gather tangible, actionable intelligence – not to mention the sense of outrage at the 11 September attacks for which the HVDs are being blamed, which often mutates into an irrational desire for vengeance – CIA interrogators have resorted and will continue to resort to whatever extremes of coercive treatment they are told is permissible.

359. I support unambiguous, transparent and strictly enforced rules on CIA detainee interrogation. The Executive Order that President Bush "shall issue" imminently<sup>312</sup> should be published in full and should expressly outlaw not only the abhorrent practice of "water boarding," but also techniques like slapping, stress positions, sleep deprivation and extremes of temperature. I note that even the Army Field Manual of September 2006 leaves open the possibility that such techniques are not prohibited, so that manual does not strike me as an appropriately robust set of minimum standards. When the long-awaited rules for the CIA are finally issued, they must set higher, clearer thresholds that maintain the integrity of these important interrogations.

### **iii. Perceptions of the HVD programme and its likely reactivation**

360. At the time of his 6 September 2006 speech, President Bush lauded the HVD programme as a policy that *"has been, and remains, one of the most vital tools in our war against the terrorists"*. In the experience of our team during this inquiry, the President's view is largely shared among those officers who had knowledge of the programme. With only very few exceptions, the majority of our sources in the CIA and the wider intelligence community have described the HVD programme as a success, or in one case *"about as good as it could have turned out"*.

361. The following is an excerpt from our interview with a senior US intelligence source:

*"I think you have to understand that the programme we ran through 2005, into 2006 to handle the HVDs was both needs-oriented and results-oriented. We needed to show that we could capture*

<sup>308</sup> See US National Defence Intelligence College, Intelligence Science Board, *Educing Information – Interrogation: Science and Art (Foundations for the Future)*, Phase I Report, Washington, DC, completed December 2006 – released 29.05.2007 (hereinafter "Intelligence Science Board, *Educing Information*").

<sup>309</sup> See Scheinin, "Preliminary Findings on Visit to US," *supra* note 307.

<sup>310</sup> For a review of the full report and several background interviews with its authors, see Scott Shane and Mark Mazzetti, "Interrogation Methods are Criticised", in *The New York Times*, 30.05.2007, available at: [http://www.nytimes.com/2007/05/30/washington/30interrogate.html?bl=&\\_r=1&ei=5087%0A&en=dc81cce01b99827c&ex=1180756800&adxnnl=1&oref=slogin&adxnnlx=1180692698-m6KgJwvypPYbDzvaqwOvCA](http://www.nytimes.com/2007/05/30/washington/30interrogate.html?bl=&_r=1&ei=5087%0A&en=dc81cce01b99827c&ex=1180756800&adxnnl=1&oref=slogin&adxnnlx=1180692698-m6KgJwvypPYbDzvaqwOvCA)

<sup>311</sup> See Steve Kleinman, "Barriers to Success: Critical Challenges in Developing a New Educing Information Paradigm," excerpts taken from pp. 254, 255 and 265, in *Intelligence Science Board, "Educing Information"*, *supra* note 308, at pp. 235-266.

<sup>312</sup> According to the Military Commissions Act 2006, at §§ 6(a)(3)(A) and (B), the President "shall issue" an Executive Order containing authoritative interpretations of the "meaning and application of the Geneva Conventions" that would then apply to interrogations carried out by the CIA. Recent news reports have stated that a lengthy deliberative process involving lawyers in the State Department, the White House, Directorate of National Intelligence and the Department of Defense would most likely lead to this Executive Order being published before the summer of 2007; see, for example, Mark Mazzetti, "CIA Awaits Rules on Terrorism Interrogations," in *The New York Times*, 25.03.2007, available at:

<http://www.nytimes.com/2007/03/25/washington/25interrogate.html?ex=1332475200&en=c7c0814347030512&ei=5088&partner=rssnyt&emc=rss>

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*those responsible for 9/11, break down key Al-Qaeda cells at their source, and keep the threat of terror attacks as far away from the American people as possible. We needed to work with our most trusted allies to avoid leaks that would endanger national security – ours or theirs. The results speak for themselves.*

*And if you look at our situation now, the needs are different from the immediate post-9/11 period. Bringing those 14 HVDs to Guantanamo – the Zubaydahs and the KSMS – was like drawing a line under that programme in the way it had been operating, as a lot of guys weren't happy going on with it. Sure, there'll be something else to replace it, but we don't know what that looks like yet."*

362. Our sources have stated categorically to us that from the perspective of the CIA officials who operated it, the specific aspects of the "High-Value Detainee" programme on which this report concentrates – including the European "black sites" – belong to a chapter of the post-9/11 story that is essentially closed.

363. At first sight, this analysis appears valid. The 14 HVDs whom our sources agreed to discuss with us (at least on a limited basis) have been transferred to and are all now held at Guantanamo Bay. They have received visits from representatives of the International Committee of the Red Cross (ICRC), which indicates that their fundamental rights as detainees have at last been regularised, at least as far as this particular aspect is concerned. They are no longer regarded as having high "live" intelligence value for the CIA or the US Government,<sup>313</sup> and so they were subject to Combatant Status Review Tribunal (CSRT) proceedings in early 2006 to rubber-stamp their status as "unlawful enemy combatants". Ultimately, these HVDs will be among the first detainees to be charged with specific offences in individual military commissions processes.

364. On the other hand, however, there can be little doubt that the Bush Administration is prepared to resort once again to some form of CIA detention and interrogation regime in the future. If President Bush's claim on 6 September 2006 that *"there are now no terrorists in the CIA program"* represented the closing of one chapter, then his very next sentence heralded the opening of another: *"But as more high-ranking terrorists are captured, the need to obtain intelligence from them will remain critical – and having a CIA program for questioning terrorists will continue to be crucial to getting life-saving information"*.<sup>314</sup>

365. Indeed, there are clear indications that the HVD programme has been reactivated in recent months. The transfer of Abd Al-Iraqi to Guantanamo Bay in April 2007<sup>315</sup> bore strikingly similar characteristics to the 14 transfers in September 2006: during his several months in CIA detention prior to his transfer to Cuba, he appears to have been kept incommunicado and subjected to interrogation at an unknown site.

366. Indeed Al-Iraqi's handover to the Department of Defense only *after* his intelligence value to the CIA had been completely exploited would seem to confirm this statement from one of our intelligence sources: *"The CIA has gone from having no interest in interrogation to being the agency of preference in this area. We'll only give them up to the DoD once we've got everything we can out of them."*

#### **iv. Concluding thoughts**

367. It is my sincere hope that my report this year will catalyse a renewed appreciation of the legal and moral quagmire into which we have collectively sunk as a result of the US-led "war on terror." Almost six years in, we seem no closer to pulling ourselves out of this quagmire, partly because of the absence of factual clarity – perpetuated by secrecy, cover-up and dishonesty – about the exact practices in which the US and its allies have engaged, and partly because a lack of urgency and political will on both sides of the Atlantic to unite around consensus solutions.

368. By clarifying some of the unspoken truths that have previously held us back in this exercise, I hope I have spurred right-minded Americans and Europeans alike into realising that our common values, in tandem with our common security, depend on our uniting to end the abusive practices inherent in US policies like the "High-Value Detainee" programme.

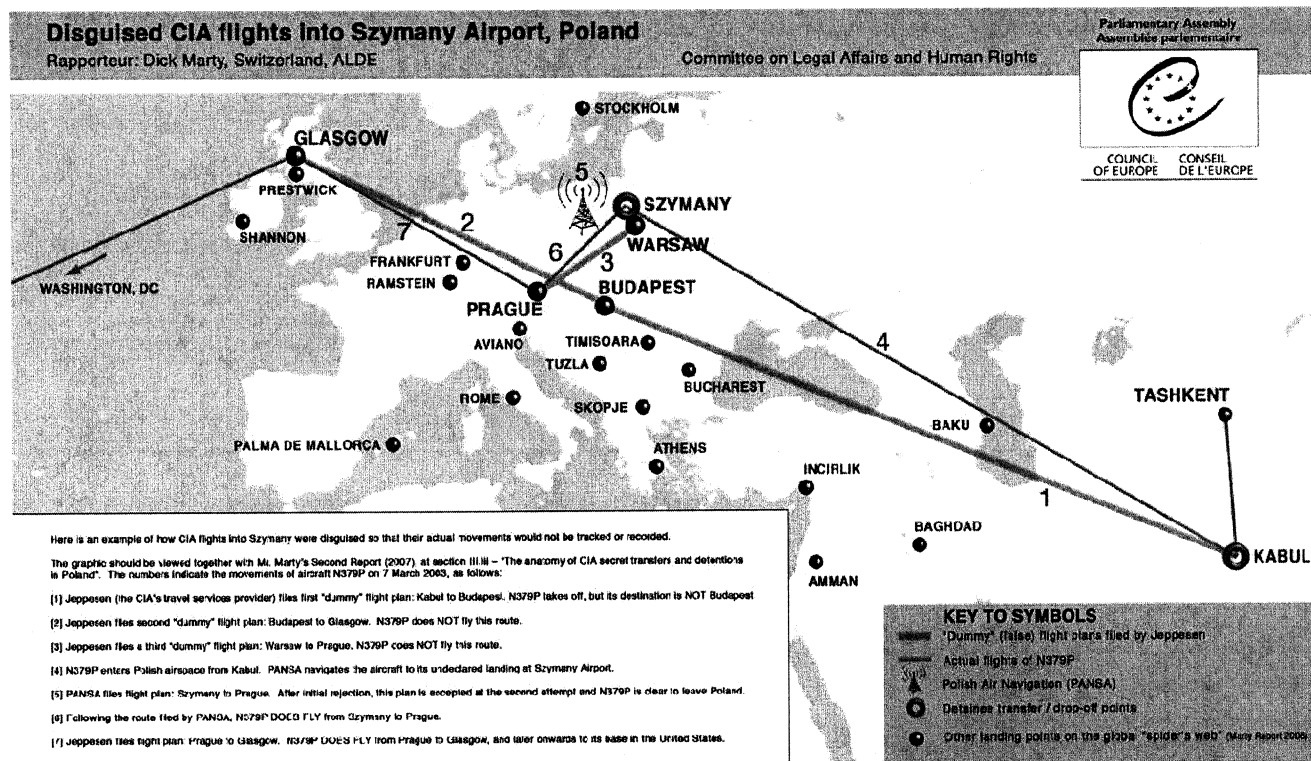
<sup>313</sup> See Remarks by President Bush, 06.09.2006, *supra* note 3: *"We have largely completed our questioning of the men – and to start the process for bringing them to trial, we must bring them into the open". One of our sources also conceded that having held these detainees for several years in incommunicado detention, it would be "disingenuous" to say that they are still "live intelligence assets"*.

<sup>314</sup> See Remarks by President Bush, 06.09.2006, *supra* note 3. Also, for the President's interpretation of the CIA programme's status under the revised law, see The White House, Office of the Press Secretary, "President Bush Signs Military Commissions Act of 2006", 17.10.2006, available at <http://www.whitehouse.gov/news/releases/2006/10/20061017-1.html>. The Act, he said, "will allow the Central Intelligence Agency to continue its program for questioning key terrorist leaders and operatives."

<sup>315</sup> See US Department of Defense, "Defense Department takes custody of al-Qaeda leader," 27 April 2007, available at <http://www.defenselink.mil/news/newsarticle.aspx?id=32969>.

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## Appendix 1



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Appendix 2

**The "secure zone" for CIA transfers and secret detentions in Romania**

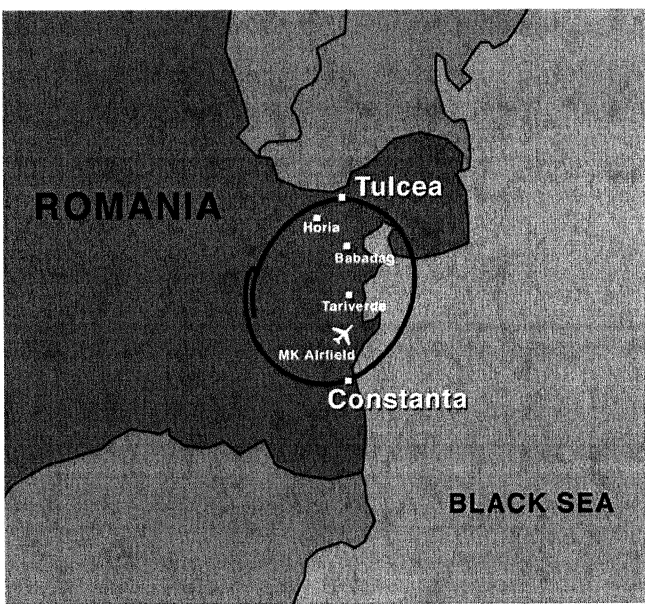
Rapporteur: Dick Marty, Switzerland, ALDE

Committee on Legal Affairs and Human Rights

Parliamentary Assembly  
Assemblée parlementaire



COUNCIL OF EUROPE  
CONSEIL DE L'EUROPE



Here is a simple graphic representation of the CIA's "secure zone" for secret detentions and transfers of detainees in Romania.

The graphic should be viewed together with Mr. Marty's Second Report (2007), at section IV.III – "The anatomy of CIA secret transfers and detentions in Romania".

A source in Romanian military intelligence described the approximate size and location of this "secure zone". He used his right index finger to indicate the outer perimeter on a detailed map of Romania. He said:

"We have to seal [this] entire area and limit access there."

Graphic design by Denis Werra Farnham

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## Appendix 3

## Relevant flight logs from the Marty Database

Registration Identifier or Call sign (N_Number)	Airport of Departure (ADEP)	ADEP Name	Airport of Destination (ADES)	ADES Name	Date	Take-off Time (ATOT) DD:HH:MM	Arrival Time (ATA)	Aircraft Type	Registered User or Operator Name
N982RK	KIAD	WASHINGTON	EINN	SHANNON	26/5/04	26, 16:29	> no data available <	GLF3	RICHMOR AVIATION
N982RK	EINN	SHANNON	LCLK	LARNACA	26/5/04	26, 17:37	> no data available <	GLF3	RICHMOR AVIATION
N982RK	LCLK	LARNACA	OAKB	KABUL	27/5/04	27, 21:44	> no data available <	GLF3	RICHMOR AVIATION
N982RK	OAKB	KABUL	LAKV	KUCOVA MILITARY AERODROME	28/5/04	28, 07:04	11:38 AFT (local time)	GLF3	RICHMOR AVIATION
N982RK	LAKV	KUCOVA MILITARY AERODROME	LQSA	SARAJEVO	28/5/04	28, 10:45	12:45 AFT (local time)	GLF3	RICHMOR AVIATION
N982RK	LQSA	SARAJEVO	LKPR	PRAHA / RUZYNE	29/5/04	29, 11:52	> no data available <	GLF3	RICHMOR AVIATION
N982RK	LKPR	PRAHA / RUZYNE	BIKF	KEFLAVIK 63 56N 22 30W H3000	29/5/04	29, 09:07	> no data available <	GLF3	RICHMOR AVIATION
N982RK	BIKF	KEFLAVIK 63 56N 22 30W H3000	KIAD	WASHINGTON	> no data available <	> no data available <	> no data available <	GLF3	RICHMOR AVIATION